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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/677,737	10/02/2000	Curtis Cole	JBP525	3415

7590

11/03/2005

Philip S Johnson  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933-7003

EXAMINER
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YU, GINA C

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/677,737	<b>Applicant(s)</b> COLE ET AL.	
	<b>Examiner</b> Gina C. Yu	<b>Art Unit</b> 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5 and 6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Receipt is acknowledged of amendment filed on August 10, 2005. Claims 1-3, 5, and 6 are pending. Claim rejections made under 35 U.S.C. § 102 as indicated in the previous Office action dated April 7, 2005 are withdrawn and modified to address the amended claim limitation. New rejections are made.

#### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1-3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Tokuyama et al. (EP 1090630 A1) ("Tokuyama ").**

Tokuyama discloses method of treating atopic dermatitis such as erythema by topically applying a composition comprising ethanolamine in cosmetically acceptable carriers. See abstract; par. 0234-0259; instant claim 1. See par. 0006 which meets the formula and the constituents of instant claim 1. Par. 0011 discloses 2-ethylaminoethanol, diethanolamine, diethanolamine, and 2-dimethylaminoethanol, and specific formulations comprising 1 % by weight of the ethanolamines are disclosed in Examples 13-16, among others. See par. 120-124; instant claims 1-3. The compositions also comprise paraben and ethanol, potentially skin-irritating materials. See instant claim 6. See par. 2. See Berndt (US 5626856), col. 1, lines 55 – 64. The claimed method of "ameliorating the irritating effects of a skin irritating composition" is inherently practiced by making the Tokuyama composition by adding paraben with dimethylethanolamine as disclosed by the reference.

The prior art method of treating atopic dermatitis such as erythema meets instant claim of method of treating the inflamed skin due to allergic skin reactions, as erythema can be caused by allergic skin reaction. See applicants' spec. p. 7, lines 18 – 28.

**Claims 1-3, 5, 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Perricone (US 6365623 B1) ('623).**

'623 patent teaches method of treating acne in inflammation phase by applying a composition comprising lipoic acid and most preferably adjunct ingredients such as 0.5 – 5 % by weight of methyl or ethyl-aminoalcohols or 0.05-% by weight of tyrosine. See col. 1, line 21 – col. 2, line 6; col. 5, 30-53; col. 8, lines 41-61; col. 9, lines 16-22; instant claims 1 and 5. The patent specifically states, "one particularly efficacious embodiment of the invention contains lipoic acid, glycolic or lactic acid, and dimethylaminoalcohol; and another further contains tyrosine." See col. 9, lines 21-23. The reference teaches that Examiner asserts that the claimed method is anticipated by the specific teaching here. As for claim 6, the reference teaches to incorporate benzyl peroxide, retinoids, alpha-hydroxy acids such as glycolic acids, which potentially irritate the skin. See Ren (US 6183747 B1), col. 2, lines 2 –18; Ptchelintsev et al. (US 6333356 B1), col. 1, lines 40-49.

The prior art method of reducing erythema meets instant claim of method of treating the inflamed skin due to allergic skin reactions, as erythema can be caused by allergic skin reaction. See Perricone, abstract; applicants' spec. p. 7, lines 18 – 28.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-3, 5, and 6 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 7:00AM until 4:30 PM.

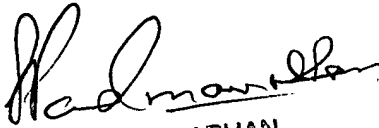
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gina Yu  
Examiner

  
SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER